OLR Bill Analysis

sHB 6658 (as amended by House "B")*

AN ACT CONCERNING EMPLOYER USE OF NONCOMPETE AGREEMENTS.

SUMMARY:

This bill voids certain noncompete agreements between an employer and an employee made, renewed, or extended on or after October 1, 2013, unless before entering into the agreement, the employer provides the employee with (1) a written copy of the agreement and (2) at least seven days, and more if reasonable, to consider the merits of entering into the agreement. The bill applies when (1) an employer is acquired by or merges with another employer and (2) as a result of the acquisition or merger, an employee's continued employment is conditioned on the employee entering into a noncompete agreement. Such an agreement prohibits an employee from engaging in certain employment or a line of business after termination of employment.

The bill allows an employee to waive his or her right to have a noncompete agreement rendered void pursuant to the bill by signing a separate document that describes the right he or she is waiving before entering into the agreement.

The bill does not limit or deny an employee any rights they have under that law.

The bill does not affect current law regarding noncompete agreements for security guards and broadcast employees (see BACKGROUND).

*House Amendment "B" replaces the underlying bill which codified Connecticut common law regarding noncompete agreements between employers and employees and required that employees have at least

10 days to consider such an agreement before entering into it.

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Common Law Regarding Noncompete Agreements

A noncompete agreement or covenant is considered a restrictive covenant under common law (*Scott v. General Iron & Welding Co., Inc.* 171 Conn. 132 (1976)). The factors courts currently use to evaluate whether a particular restrictive employment covenant is reasonable are:

1. the length of time the restriction operates,
2. the geographical area covered,
3. the fairness of the protection afforded the employer,
4. the extent of the restraint on the employee's opportunity to pursue his occupation, and
5. the extent of interference with the public interest.

Under current court standards, a covenant must apply for a definite and reasonable time period and cover a geographical area that fairly protects both parties.

Under common law, if the court finds a restrictive covenant to be unreasonable in some aspect, a court can limit the covenant to make it reasonable and enforce the limited covenant. In that situation, the court considers what would have been reasonable in light of the circumstances in which the covenant was made.

Statutory Law Regarding Noncompete Agreements

Existing statutory law restricts the terms and enforcement of noncompete agreements for security guards and broadcast employees (CGS §§ 31-50a & b, respectively). Generally, an employer cannot restrict a security guard from working for another employer at the same location through the use of a noncompete agreement unless the

employer proves that the guard obtained the employer's trade secrets during his or her employment. And, generally, broadcast television and radio industry employers cannot:

1. restrict an employee's right to work for a certain period of time within a certain geographical area after his or her present employment contract expires;

2. require an employee to disclose any offers he or she receives for alternative employment after the present employment is terminated; or

3. require an employee to accept future or continuing employment with the employer on the same terms as an alternative offer for employment.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 44 Nay 0 (04/16/2013)

Labor and Public Employees Committee

Joint Favorable
Yea 8 Nay 0 (05/14/2013)